IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1630 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHANDULAL JETHALAL JAISWAL - Applicant(s)
Versus
INCOME TAX OFFICER & 2 - Respondent(s)

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Appearance :
PARTY-IN-PERSON for Applicant(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
Mr.K.P.Raval, A.P.P. for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 10/05/2007

ORAL JUDGMENT

1. By means of this petition filed under Articles 226, 227, 14, 19 and 21 of the Constitution of India, Secs.256, 260,A(1) etc. of the

Income-Tax Act and also under Secs.195, 196 read with sec.196 and 120(B) of the Cr.P.C., the petitioner -party-in-person has sought following reliefs at para 12 of the petition– (A) that the learned Chief Judicial Magistrate has no jurisdiction to decide the issue which has already been decided by the Honourable High Court, (B) to direct the Income-tax Officer or Income-tax Commissioner to return forthwith the gold ornaments weighing 1318 gms seized by the Department,(C) to direct the Commissioner of Income-tax , Vadodara to pay Rs.50,00,000/- to the petitioner towards compensation and (D) to grant interim relief in the form of Rs.5,00,000/- by way of a direction to the Union of India, Commissioner of Income-tax to pay the same.

2. At the outset, it may be stated that the prayers made vide paragraph 12 (B), (C) and (D) of the petitioner are wholly misconceived, and hence, rejected.

3. Short facts of the case are that on 15-7-1976 a search operation under Section 132 of the Income-tax Act was carried out at the residential premises of the present petitioner original accused and certain books of account and incriminating documents and valuables were found and seized. Subsequently, by an order dated 11-10-1976 the undisclosed income of the petitioner was also determined by the department. Thereafter, the Income-Tax Officer filed Criminal Complaint bearing Criminal Cases nos.2915 to 2922

of 1993 in which the present petitoner has initially preferred Application Exh.12 which came to be dismissed as the petitioner had failed to produce copy of the judgment delivered by the High Court dated 5-2-92. The petitioner then moved Applicaction Exh.27 before the learned Chief Judicial Magistrate ,Vadodara , by prodcucing the certified copy of the said judgment for granting the same relief for obtaining Muddamal and awarding compenstion, petition which also met with the same fate vide order dated 11-8-2006 passed bewlow Exh.27 in Criminal Case no.2915/93, in giving rise to the present application.

4. According the petitioner he has filed appeals against the said order before the appellate Commissioner, the Income-Tax Appellate Tribunal and also in the High Court of Gujarat.

5. Heard party in person -Chandulal Jethalal Jaiswal and learned A.P.P. Mr. K.P.Raval for the respondent no.3- State. Though notice has been served, the respondents nos.1 and 2 have neither remained personally present nor appeared through any Advocate.

6. It is the submission of the petitioner-party-in-person that prior to the filing of the said Exh.27 application, he had preferred Exh.12 Application in Criminal Case nos.2915 to 2922 of 1993 for the same relief, however, as he could not produced the certificated copy of the judgment delivered by the Honourable High Court in various

decisions under the Income-Tax Act, the same came to be dismissed by the learned Judicial Magistrate, Vadodara. According to him, the said application has not been decided on merits, and therefore, he is entitled to file a second application producing therewith the certified copy of the judgment of the High Court as aforesaid.

7. This Court has gone through the entire record of the case as also the documents produced alongwith the memo of petition. It may be noted that the present petitioner has not produced Exh.12 Application together with the order thereon, and therefore, this Court is not in a position to appreciate the fact whether the said order below Exh.12 has been passed on merits, or on any technical ground. On a careful reading of the order below Exh.27 in Criminal Case no.2915/1993 passed by the learned Judicial Magistrate, Vadodara, it transpires that, the learned Magistrate has arrived at a finding that for the same cause of action Exh.12 Application has been preferred by the present petitioner; that the question whether sanction granted by the competent authority of the Income-tax Department to prosecute the present petitioner is legal or not can be decided only after recording evidence at the trial. The petitioner has not chosen to file any Revision Application against the order below Exh.12 but instead preferred Application Exh.27 for the same cause. The petitioner cannot be permitted to take advantage of his own wrong. I, therefore, do not find any infirmity in the order passed by the learned Magistrate below

Application Exh.27 in Criminal Case no.2915 of 1993, the same having been passed on merits.

7.1 The petitioner-party in-person has invited my attention to the following decisions in support of his contentions:

1. Nilabati Behera (Smt.) Alias Lalita Behera (through the Supreme Court Legal Aid Committee v. State of Orissa and Others reported in (1993) 2 SCC 746.
2. Smt. Kumari v. State of Tamil Nadu & Others, reported in JT 1992 S.C.16.
3. M.S.Ahlawat v. State of Haryana and another reported in AIR 2000 SC 168.
4. Suo Moto Proceedings against Mr. R. Karuppan, Advocate reported in 2001(4) Supreme 108.
5. Sindhi Kasam Moti by Lrs. v. M.N.Buch reported in 1984 G.L.H. 893.

8. I have examined these authorities in the light of the submissions made by the petitioner. I am in complete agreement with the ratio laid down in these decisions, However, I find that the ratio laid down in all these decisions stands on a different footing and cannot be made applicable to the facts of the present case, more so, when each case has to be decided on the facts of that particular case.

9. In view of what is discussed hereinabove, the petition fails and is hereby dismissed. Rule is discharged. The Criminal Cases are of the year 1993. The learned Chief Judicial Magistrate, Vadodara, before whom Income Tax Criminal Case no.2915 to 2922 of 1993 is pending shall dispose of the same as expeditiously as possible, preferably, within three months from the date of receipt of

the writ of this order, without being influenced by any of the observations made in this order, as they are confined only for the purpose of disposal of this application.

(M.D.Shah,J.)

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